

1 SENATE BILL 483

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Carroll H. Leavell

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10 AN ACT

11 RELATING TO INSURANCE; AMENDING THE NEW MEXICO INSURANCE CODE
12 TO MODERNIZE THE REGULATION OF PROPERTY AND CASUALTY RATES AND
13 FORMS; INCREASING PENALTIES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 Section 1. Section 59A-17-1 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 299) is amended to read:

18 "59A-17-1. SHORT TITLE.--~~[This article]~~ Chapter 59A,
19 Article 17 NMSA 1978 may be cited as the "Insurance Rate
20 Regulation Law"."

21 Section 2. Section 59A-17-2 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 297) is amended to read:

23 "59A-17-2. SCOPE OF ARTICLE--EXEMPTIONS.--

24 A. ~~[This article]~~ The Insurance Rate Regulation Law
25 applies to all kinds and lines of direct insurance written on

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1 risks or operations in this state by any authorized insurer,
2 except:

3 (1) wet marine and transportation insurance,
4 as defined in Section [~~111 of the Insurance Code~~] 59A-7-5 NMSA
5 1978;

6 (2) life insurance;

7 (3) variable and fixed annuities; and

8 (4) health insurance.

9 B. [~~As to workmen's compensation insurance, this~~
10 ~~article shall apply except as otherwise expressly provided.~~]

11 For purposes of [~~this article "workmen's~~] the Insurance Rate
12 Regulation Law, "workers' compensation" insurance includes
13 [~~also~~] employer's liability insurance.

14 C. The superintendent may by order exempt any
15 person or class of persons or any market segment from any or
16 all of the provisions of [~~this article~~] the Insurance Rate
17 Regulation Law to the extent that the superintendent finds
18 [~~such~~] the provision or provisions unnecessary to achieve the
19 purposes of [~~this article~~] that law."

20 Section 3. Section 59A-17-4 NMSA 1978 (being Laws 1984,
21 Chapter 127, Section 300) is amended to read:

22 "59A-17-4. DEFINITIONS.--As used in [~~this article~~] the
23 Insurance Rate Regulation Law:

24 [~~A. "market" means any line or kind of insurance~~
25 ~~or, if described in general terms, any subdivision thereof or~~

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1 ~~any class of risks or combination of classes;~~

2 ~~B. "rate service organization" means any person,~~
3 ~~other than a joint underwriting organization or employee of an~~
4 ~~insurer or of a manager of insurers under common control or~~
5 ~~management, who or which:~~

6 ~~(1) collects, compiles and furnishes loss or~~
7 ~~expense statistics;~~

8 ~~(2) recommends, makes or files rates or~~
9 ~~supplementary rate information; or~~

10 ~~(3) advises about rate matters, except as an~~
11 ~~attorney giving legal advice;~~

12 ~~C. "supplementary rate information" includes any~~
13 ~~manual or plan of rates, statistical plan, classification,~~
14 ~~rating schedule, minimum premium, policy fee, rating rule,~~
15 ~~rate-related underwriting rule and any other information~~
16 ~~prescribed by rule of the superintendent.]~~

17 A. "advisory organization" means an entity,
18 including its affiliates or subsidiaries, that either has two
19 or more member insurers or is controlled either directly or
20 indirectly by two or more insurers, and that assists insurers
21 in the promulgation of policy forms; in ratemaking activities,
22 such as the collection, compilation and furnishing of loss or
23 expense statistics; or in the recommendation, making or filing
24 of rates, prospective loss costs, supplementary rate
25 information, policy forms or endorsements. Two or more

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1 insurers having a common ownership or operating in New Mexico
2 under common management or control constitute a single insurer
3 for purposes of this definition;

4 B. "commercial insurance" means any line or kind of
5 property or casualty insurance not for personal, family or
6 household needs;

7 C. "market" means any line or kind of insurance or
8 any subdivision thereof or any class of risks or combination of
9 classes;

10 D. "residual market mechanism" means an
11 arrangement, either voluntary or mandated by law, involving
12 participation by insurers in the equitable apportionment among
13 them of insurance that may be afforded applicants who are
14 unable to obtain insurance through ordinary methods;

15 E. "reverse competition" means a marketplace
16 situation where the placement of a line, kind or class of
17 insurance with insurers is determined primarily or exclusively
18 by parties other than the policyholders;

19 F. "supplementary rate information" includes any
20 manual or plan of rates, classification, rating schedule,
21 minimum premium, policy fee, rating rule, underwriting rule and
22 any other information needed to determine the applicable rate
23 in effect or to be in effect; and

24 G. "supporting information" means:

25 (1) the experience and judgment of the filer

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1 and the experience or data of other insurers or advisory
2 organizations relied upon by the filer;

3 (2) the interpretation of any other data
4 relied upon by the filer;

5 (3) descriptions of methods used in making the
6 rates; and

7 (4) any other information required by the
8 superintendent to be filed."

9 Section 4. A new section of the Insurance Rate Regulation
10 Law is enacted to read:

11 "[NEW MATERIAL] COMPETITIVE MARKET.--A competitive market
12 is presumed to exist unless the superintendent, after notice
13 and hearing, determines that a reasonable degree of competition
14 does not exist within a market and issues a ruling to that
15 effect. The ruling shall expire three years after issue unless
16 rescinded earlier by the superintendent or unless the
17 superintendent renews the ruling after a hearing and a finding
18 as to the continued lack of a reasonable degree of competition.
19 Any ruling that finds that competition does not exist shall
20 identify the factors that cause the market not to be
21 competitive and may also include a plan for enhancing
22 competition. The superintendent shall monitor the degree and
23 continued existence of competition in New Mexico on an ongoing
24 basis. An interested party may petition the superintendent to
25 initiate a hearing to examine whether a particular market is

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1 competitive or whether a particular market is no longer
2 noncompetitive."

3 Section 5. A new section of the Insurance Rate Regulation
4 Law is enacted to read:

5 "[NEW MATERIAL] REVERSE COMPETITIVE MARKET.--A reverse
6 competitive market for a line, kind or class of insurance is
7 presumed to exist wherever the placement of a line, kind or
8 class of insurance with insurers is determined primarily or
9 exclusively by parties other than the policyholders. The
10 superintendent may, by notice and hearing, establish rules for
11 determining the specific lines, kinds or classes of insurance
12 that, for the purposes of the Insurance Rate Regulation Law,
13 are reversely competitive."

14 Section 6. A new section of the Insurance Rate Regulation
15 Law is enacted to read:

16 "[NEW MATERIAL] CONSUMER INFORMATION.--

17 A. The superintendent shall use, develop or cause
18 to be developed a consumer information system that will provide
19 and disseminate price and other relevant information on a
20 readily available basis to purchasers of homeowners, private
21 passenger non-fleet automobile or property insurance for
22 personal, family or household needs as well as for any other
23 types of personal or commercial insurance designated by the
24 superintendent. To the extent deemed necessary and appropriate
25 by the superintendent, insurers, advisory organizations and

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1 other persons or organizations involved in conducting the
2 business of insurance in New Mexico, to which this section
3 applies, shall cooperate in the development and utilization of
4 a consumer information system.

5 B. An insurer writing homeowners insurance or
6 private passenger non-fleet automobile insurance in New Mexico
7 shall, upon renewal or upon the transfer of a policy to another
8 insurer under the same ownership or management as the
9 transferring insurer, provide its policyholders with written
10 notification of their right to obtain from the insurer a
11 detailed written explanation of the reasons why their policy
12 premium has changed or is about to change."

13 Section 7. A new section of the Insurance Rate Regulation
14 Law is enacted to read:

15 "[NEW MATERIAL] UNDERWRITING GUIDELINES.--

16 A. The superintendent may direct an insurer writing
17 homeowners insurance, private passenger non-fleet automobile
18 insurance or other lines, kinds or classes of noncommercial
19 insurance in New Mexico to file with the superintendent
20 underwriting guidelines that determine the acceptance of
21 applicants and tiering guidelines that determine the placement
22 of applicants and insureds into rating tiers, regardless of
23 whether such tiers exist within the insurer or within a group
24 of insurers under common ownership or management.

25 B. The superintendent, after notice and hearing,

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1 may order an insurer to cease using underwriting or tiering
2 guidelines that are unfairly discriminatory or that fail to
3 place applicants and insureds into tiers in a clear, objective,
4 risk-based and mutually exclusive manner.

5 C. Filings made pursuant to this section shall be
6 considered confidential trade secrets under the Uniform Trade
7 Secrets Act."

8 Section 8. Section 59A-17-6 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 302) is amended to read:

10 "59A-17-6. RATE STANDARDS.--

11 A. Rates shall not be excessive, inadequate or
12 unfairly discriminatory, nor shall an insurer charge any rate
13 [~~which~~] that, if continued, will have or tend to have the
14 effect of destroying competition or creating a monopoly.

15 B. In a competitive market, rates are presumed not
16 to be excessive [~~if a reasonable degree of price competition~~
17 ~~exists at the consumer level with respect to the class of~~
18 ~~business to which they apply. In determining whether a~~
19 ~~reasonable degree of price competition exists, the~~
20 ~~superintendent shall consider all relevant tests including:~~

21 ~~(1) the number of insurers actively engaged in~~
22 ~~the class of business;~~

23 ~~(2) the existence of rate differentials in~~
24 ~~that class of business; and~~

25 ~~(3) whether profitability for insurers~~

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1 ~~generally of the class of business is unreasonably high in~~
2 ~~relation to its riskiness].~~

3 C. In a noncompetitive market [~~where such rate~~
4 ~~competition does not exist~~], rates are excessive if they are
5 likely to produce a profit that is unreasonably high in
6 relation to the riskiness of the line, kind or class of
7 business, or if expenses are unreasonably high in relation to
8 the services rendered.

9 D. Rates are inadequate if they are clearly
10 insufficient, together with the investment income attributable
11 to them, to sustain projected losses and expenses in the line,
12 kind or class of business to which they apply.

13 E. There is unfair discrimination if one rate is
14 unfairly discriminatory in relation to another in the same
15 line, kind or class if it clearly fails to reflect equitably
16 the differences in expected losses and expenses. Rates are not
17 unfairly discriminatory because different premiums result for
18 policyholders with like loss exposures but different expense
19 factors, or like expense factors but different loss exposures,
20 so long as the rates reflect the differences with reasonable
21 accuracy. Rates are not unfairly discriminatory if they are
22 averaged broadly among persons insured under a group, franchise
23 or blanket policy or a mass marketing plan.

24 [~~F. This section shall not apply as to workmen's~~
25 ~~compensation insurance.]"~~

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1 Section 9. Section 59A-17-7 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 303) is amended to read:

3 "59A-17-7. RATING METHODS.--~~[A.]~~ In determining whether
4 rates comply with the rate standards, the following criteria
5 shall be applied:

6 ~~[(1)]~~ A. due consideration shall be given to past
7 and prospective loss and expense experience within and without
8 this state, to catastrophic hazards and contingencies, to
9 trends within and without this state, to loadings for leveling
10 premium rates over time or for dividends or savings to be
11 allowed or returned by insurers to their policyholders, members
12 or subscribers and to all other relevant factors, including the
13 judgment of technical personnel;

14 ~~[(2)]~~ B. risks may be classified in any reasonable
15 way for the establishment of rates and minimum premiums, except
16 that classifications may not be based on race, color, creed or
17 national origin;

18 ~~[(3)]~~ C. the expense provisions included in the
19 rates to be used by an insurer may reflect the operating
20 methods of the insurer and, so far as it is credible, its own
21 expense experience; and

22 ~~[(4)]~~ D. the rates may contain an allowance
23 permitting a profit that is not unreasonable in relation to the
24 riskiness of the line, kind or class of business. Profit shall
25 include investment income attributable to such rates.

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1 ~~[B. This section shall not apply as to workmen's~~
2 ~~compensation insurance.]"~~

3 Section 10. Section 59A-17-7.1 NMSA 1978 (being Laws
4 1987, Chapter 80, Section 1) is amended to read:

5 "59A-17-7.1. [~~RATES--COVERAGE~~] MOTOR VEHICLE LIABILITY--
6 NOT-AT-FAULT ACCIDENTS.--

7 A. The rates of a motor vehicle liability insurer
8 shall not provide for an increase in the premium if based upon
9 an accident in which the insured is not at fault in any manner
10 as determined by either the accident report or the insurer. If
11 the insurer determines that its insured is at fault contrary to
12 the specific finding of an accident report that the insured is
13 not at fault, the insurer shall reach its conclusion only after
14 an investigation.

15 B. A motor vehicle liability insurer shall not
16 cancel, or use as a basis for nonrenewal, an insurance policy
17 if such cancellation or nonrenewal is based upon an accident in
18 which the insured is not at fault in any manner as determined
19 by either the accident report or the insurer. If the insurer
20 determines that its insured is at fault contrary to the
21 specific finding of an accident report that the insured is not
22 at fault, the insurer shall reach its conclusion only after an
23 investigation.

24 C. As used in this section, "motor vehicle
25 liability insurer" means an insurer authorized to transact in

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1 this state the business of automobile and motor vehicle bodily
2 injury, property damage liability and physical damage
3 insurance.

4 D. This section shall not apply if other factors
5 exist, exclusive of the accident in which the insured is not at
6 fault, ~~[which]~~ that allow for a premium increase, cancellation
7 or nonrenewal of an insurance policy under the Insurance Code
8 or ~~[regulations]~~ rules pursuant to the Insurance Code."

9 Section 11. Section 59A-17-8 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 304, as amended) is amended to read:

11 "59A-17-8. MAKING OF RATES--WORKERS' COMPENSATION--RATE
12 CALCULATIONS--RATE CLASSIFICATIONS.--

13 ~~[A. All rates for workers' compensation shall be~~
14 ~~made in accordance with the following provisions:~~

15 ~~(1) due consideration shall be given to past~~
16 ~~and prospective loss experience within this state, to~~
17 ~~catastrophe hazards, if any, to a reasonable margin for profit~~
18 ~~and contingencies, taking into account investment income~~
19 ~~attributable to such rates and to that portion of capital and~~
20 ~~surplus acquired after July 1, 1987, to dividends, savings or~~
21 ~~unabsorbed premium deposits allowed or returned by insurers to~~
22 ~~their policyholders, members or subscribers, past and~~
23 ~~prospective expenses applicable to this state and to all other~~
24 ~~relevant factors within this state; provided that a rate filer~~
25 ~~may rely on non-New Mexico experience upon demonstrating, to~~

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1 ~~the superintendent's satisfaction, both the necessity for and~~
2 ~~appropriateness of the use of that experience;~~

3 ~~(2) the systems of expense provisions included~~
4 ~~in the rates for use by any insurer or group of insurers may~~
5 ~~differ from those of other insurers or groups of insurers to~~
6 ~~reflect the requirements of the operating methods of any such~~
7 ~~insurer or group with respect to any kind of insurance or with~~
8 ~~respect to any subdivision or combination thereof for which~~
9 ~~subdivision or combination separate expense provisions are~~
10 ~~applicable;~~

11 ~~(3) risks may be grouped by classifications~~
12 ~~for the establishment of rates and minimum premiums.~~
13 ~~Classification rates may be modified to produce rates for~~
14 ~~individual risks in accordance with rating plans that establish~~
15 ~~standards for measuring variations in hazards or expense~~
16 ~~provisions, or both. Such standards may measure any~~
17 ~~differences among risks that can be demonstrated to have a~~
18 ~~probable effect upon losses or expenses; and~~

19 ~~(4) rates shall not be excessive, inadequate~~
20 ~~or unfairly discriminatory.~~

21 ~~B. Except to the extent necessary to meet the~~
22 ~~provisions of Paragraph (4) of Subsection A of this section,~~
23 ~~Subsection C of this section and Subsection E of Section~~
24 ~~59A-17-17 NMSA 1978, uniformity among insurers in any matters~~
25 ~~within the scope of Chapter 59A, Article 17 NMSA 1978 is~~

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1 ~~neither required nor prohibited.]~~

2 A. A workers' compensation insurer shall adhere to
3 a uniform classification system and uniform experience rating
4 system filed with the superintendent by an advisory
5 organization designated by the superintendent.

6 B. A workers' compensation insurer shall report its
7 experience in accordance with the statistical plans and other
8 reporting requirements in use by the advisory organization
9 designated by the superintendent.

10 C. Workers' compensation premium rates shall be
11 equalized and calculated on a basis that does not discriminate
12 against or penalize employers who pay higher wages than other
13 employers to workers in the same job classification. The
14 legislature finds that calculating workers' compensation
15 premium rates strictly on the basis of an employer's wages paid
16 discriminates against and penalizes higher-paying employers.
17 The legislature accordingly directs that the superintendent
18 shall:

19 (1) investigate alternatives to the current
20 method of computing workers' compensation premiums, including
21 but not limited to:

- 22 (a) split classification;
- 23 (b) payroll cap;
- 24 (c) hours worked; and
- 25 (d) premium credits;

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1 (2) immediately conduct hearings on the issue,
2 including consideration of other alternatives; and

3 (3) adopt regulations, to become effective no
4 later than April 1, 1991, to equalize the workers' compensation
5 premium rates employers must pay for workers who perform the
6 same job.

7 Nothing in this subsection shall be construed to prohibit
8 the use of experience rating or scheduled credits.

9 D. ~~[Any rate classification system relied on for~~
10 ~~workers' compensation shall be updated and revised periodically~~
11 ~~to reflect changes in the workplace. The superintendent shall~~
12 ~~by regulation provide for periodic updating and revision.] A~~
13 workers' compensation insurer may develop subclassifications of
14 the uniform classification system upon which rates may be made.
15 Such subclassifications and their filing shall be subject to
16 all applicable provisions of the Insurance Rate Regulation Law.
17 Data produced from such subclassifications shall be reported in
18 accordance with the statistical plans, uniform classification
19 system and experience rating system in use by the advisory
20 organization designated by the superintendent.

21 E. Classification assignments may be changed within
22 sixty days of the effective date or renewal date of the policy,
23 provided the employer is given reasonable prior notice of the
24 proposed change in order to object and provided further that
25 the change is based upon an appropriate audit or investigation.

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1 The same provisions apply to initial classification assignments
2 for new operations added by the employer so that they may be
3 changed within sixty days of the date the classification
4 assignments are initially established. No subsequent changes
5 shall be made unless the insurer proves, after conducting an
6 audit or investigation, that:

7 (1) there has been a substantial change in the
8 nature of the work performed; or

9 (2) the initial assignment was in error due to
10 withheld or inaccurate material information provided by the
11 employer.

12 F. A workers' compensation insurer may develop
13 rating plans that identify loss experience as a factor to be
14 used. The rating plans and their filing shall be subject to
15 all applicable provisions of the Insurance Rate Regulation Law.

16 G. The superintendent shall disapprove
17 subclassifications, rating plans or other variations from
18 supplementary rate information filed by a workers' compensation
19 insurer if the insurer fails to demonstrate that the data
20 produced can be reported consistent with the uniform
21 classification system and experience rating system and in such
22 a fashion so as to allow for the application of experience
23 rating filed by the advisory organization designated by the
24 superintendent."

25 Section 12. Section 59A-17-9 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 305, as amended) is amended to read:

2 "59A-17-9. FILING OF RATES [~~(OTHER THAN WORKERS'~~
3 ~~COMPENSATION)].--[As to insurance subject to Chapter 59A,
4 ~~Article 17 NMSA 1978, other than workers' compensation~~
5 ~~insurance, every insurer shall file with the superintendent all~~
6 ~~rates and supplementary rate information and all changes and~~
7 ~~amendments thereof made by it for use in this state at least~~
8 ~~sixty days before their proposed effective date. No filing~~
9 ~~made pursuant to this section shall become effective nor shall~~
10 ~~it be used until approved or deemed approved by the~~
11 ~~superintendent in accordance with Section 59A-17-13 NMSA 1978,~~
12 ~~at which time it may be used.]~~~~

13 A. In regard to filings in competitive markets:

14 (1) for purposes of this section, reverse
15 competitive markets and residual markets are not competitive
16 markets;

17 (2) for filings by insurers:

18 (a) an insurer shall file with the
19 superintendent rates and supplementary rate information prior
20 to their use in New Mexico;

21 (b) rates to be used in a competitive
22 market for commercial insurance other than workers'
23 compensation and medical professional liability need not be
24 filed; and

25 (c) insurers that wish to use workers'

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1 compensation subclassifications, rating plans, loss costs or
2 other supplementary rate information that differs from items
3 filed by the advisory organization designated by the
4 superintendent shall file with the superintendent relevant
5 subclassifications, rating plans, rates, loss costs, other
6 supplementary rate information and supporting information in
7 accordance with the requirements and provisions of Subsection B
8 of this section; and

9 (3) for filings by advisory organizations:

10 (a) with the exception of workers'
11 compensation filings, an advisory organization shall file with
12 the superintendent rates, supplementary rate information and
13 supporting information prior to their use in New Mexico; and

14 (b) regarding workers' compensation
15 filings, the advisory organization designated by the
16 superintendent shall file with the superintendent rates,
17 supplementary rate information and supporting information in
18 accordance with the requirements and provisions of Subsection B
19 of this section.

20 B. In regard to filings in noncompetitive, reverse
21 competitive and residual markets:

22 (1) an insurer or advisory organization shall
23 file with the superintendent rates, supplementary rate
24 information and supporting information for noncompetitive,
25 reverse competitive and residual markets at least thirty days

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1 before the proposed effective date;

2 (2) the superintendent may give written or
3 electronic notice, within thirty days of receipt of the filing,
4 that the superintendent needs additional time, not to exceed
5 thirty days from the date of such notice, to consider the
6 filing;

7 (3) upon written or electronic application of
8 the insurer or advisory organization, the superintendent may
9 authorize rates to be effective before the expiration of the
10 waiting period or an extension of the waiting period;

11 (4) a filing shall be deemed to meet the
12 requirements of this section and to become effective unless
13 disapproved pursuant to Section 59A-17-13 NMSA 1978 by the
14 superintendent before the expiration of the waiting period or
15 an extension of the waiting period;

16 (5) the operation of the deemer provision
17 shall be suspended during a period of not more than sixty days
18 upon written or electronic notice to the insurer or advisory
19 organization that made the filing that additional information
20 is needed to complete the review of the filing. The suspension
21 of the deemer provision may occur only once for a filing.
22 Failure of the insurer or advisory organization to provide the
23 requested information within sixty days shall be deemed a
24 request to withdraw the filing from further consideration. The
25 superintendent shall either approve or disapprove the filing

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1 within thirty days of receipt of the requested additional
2 information. Failure of the superintendent to act within the
3 thirty-day period shall result in the filing being deemed to
4 meet the requirements of the Insurance Rate Regulation Law.
5 Neither the insurer nor the superintendent may waive the
6 timeliness requirements of the deemer provisions of this
7 section; and

8 (6) residual market mechanisms or advisory
9 organizations may file residual market rates.

10 C. In regard to reference filings; an insurer may
11 file its rates either by filing its final rates or by filing a
12 multiplier and, if applicable, an expense constant adjustment
13 to be applied to prospective loss costs that have been filed by
14 an advisory organization on behalf of the insurer as permitted
15 by Section 59A-17-17 NMSA 1978. Such reference filings shall
16 be made prior to their use or by other methods the
17 superintendent may allow by rule. An insurer that chooses to
18 adopt the prospective loss costs or rates that have been filed
19 by an advisory organization on its behalf for a competitive
20 commercial line other than workers' compensation or medical
21 professional liability need not file."

22 Section 13. Section 59A-17-11 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 307, as amended) is amended to read:

24 "59A-17-11. FILINGS OPEN TO INSPECTION.--[Each] A filing
25 and [any] supporting information filed under Sections 59A-17-9

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1 and 59A-17-10 NMSA 1978 shall, as soon as filed, be open to
2 public inspection at ~~[any]~~ a reasonable time. A copy of ~~[any~~
3 ~~such]~~ a filing and supporting information may be obtained by
4 ~~[any]~~ a person on request to the superintendent and payment of
5 a reasonable charge ~~[therefor]~~. If the insurer or advisory
6 organization believes that information contained in the filing
7 contains material that it considers to be a trade secret, it
8 shall include that information in a separate section of the
9 filing and include a request for the superintendent to consider
10 whether that information should be kept confidential."

11 Section 14. Section 59A-17-12 NMSA 1978 (being Laws 1984,
12 Chapter 127, Section 308) is amended to read:

13 "59A-17-12. INSURER MUST ADHERE TO RATES--CONSENT TO
14 RATE.--

15 A. No insurer shall make or issue a contract or
16 policy of insurance except in accordance with filings or rates
17 ~~[which]~~ that are lawfully in effect for the insurer as provided
18 in ~~[this article. This subsection shall not apply as to~~
19 ~~workmen's compensation insurance, which is governed by~~
20 ~~Subsection E of Section 306 of this article]~~ the Insurance Rate
21 Regulation Law.

22 B. Upon written application of the insured stating
23 the underlying reasons ~~[therefor]~~ that is filed with and
24 approved by the superintendent, a rate in excess of or below
25 that otherwise applicable may be used as to a specific risk."

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1 Section 15. Section 59A-17-13 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 309, as amended) is amended to read:

3 "59A-17-13. [~~APPROVAL AND~~] GROUNDS AND PROCEDURES FOR
4 DISAPPROVAL OF RATES [~~(OTHER THAN WORKMEN'S COMPENSATION)--~~
5 ~~INTERIM RATES]~~.--

6 ~~[A. The superintendent shall, within sixty days~~
7 ~~after the filing of a rate under Section 59A-17-9 NMSA 1978,~~
8 ~~approve any rate if he finds that it complies with the~~
9 ~~applicable requirements of Chapter 59A, Article 17 NMSA 1978~~
10 ~~and he shall disapprove any rate if he finds that it does not~~
11 ~~comply with those provisions. If the superintendent does not~~
12 ~~approve or disapprove a rate within sixty days of filing, the~~
13 ~~rate shall be deemed approved. No insurer shall use or charge~~
14 ~~a rate that has not been approved or deemed approved by the~~
15 ~~superintendent or that is not in effect.~~

16 ~~B. If the superintendent disapproves a rate filing~~
17 ~~pursuant to Subsection A of this section, he shall send written~~
18 ~~notice of disapproval to the insurer or rate service~~
19 ~~organization that made the filing. The notice shall specify~~
20 ~~the reasons for the disapproval and state that the filing shall~~
21 ~~not become effective.~~

22 ~~C. At any time after a rate becomes effective, the~~
23 ~~superintendent may, after a hearing held not less than twenty~~
24 ~~days after the mailing of written notice to the insurer or rate~~
25 ~~service organization which made the filing, withdraw approval~~

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1 ~~of any rate if he finds that such rate fails to meet the~~
2 ~~applicable requirements of Chapter 59A, Article 17 NMSA 1978.~~
3 ~~The order withdrawing approval shall specify the respects in~~
4 ~~which the filing fails to meet such requirements and the date~~
5 ~~on which the filing shall be deemed no longer effective.~~

6 D. ~~Any person aggrieved with respect to any filing~~
7 ~~subject to this section, other than the insurer or rate service~~
8 ~~organization which made the filing, may make written~~
9 ~~application for a hearing thereon in the same manner as~~
10 ~~provided in Subsection C of Section 59A-17-14 NMSA 1978.~~

11 E. ~~Whenever an insurer has no legally effective~~
12 ~~rates as a result of the superintendent's disapproval of rates~~
13 ~~or other act, the superintendent shall on request specify~~
14 ~~interim rates for the insurer which are high enough to protect~~
15 ~~the interest of all parties and may order that a specified~~
16 ~~portion of the premium be placed in an escrow account approved~~
17 ~~by him. When new rates become legally effective, the~~
18 ~~superintendent shall order the escrowed funds or any overcharge~~
19 ~~in the interim rates to be distributed appropriately, except~~
20 ~~that de minimis refunds to policyholders shall not be~~
21 ~~required.]~~

22 A. The superintendent shall disapprove a rate for
23 use in a competitive market if the superintendent finds that
24 the rate is inadequate or unfairly discriminatory under the
25 rate standards set forth in Section 59A-17-6 NMSA 1978. The

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1 superintendent shall disapprove a rate for use in a
2 noncompetitive, reverse competitive or residual market if the
3 superintendent finds that the rate is excessive, inadequate or
4 unfairly discriminatory under the rate standards set forth in
5 Section 59A-17-6 NMSA 1978.

6 B. The superintendent may at any time disapprove a
7 filing submitted under the "file and use" provisions of
8 Subsection A of Section 59A-17-9 NMSA 1978 after giving notice
9 of hearing pursuant to the provisions of Subsection A of
10 Section 59A-4-16 NMSA 1978 to every insurer and advisory
11 organization that adopted the rate.

12 C. The superintendent may disapprove a filing
13 submitted under the "prior approval" provisions of Subsection B
14 of Section 59A-17-9 NMSA 1978:

15 (1) without a hearing prior to the expiration
16 of the waiting period or an extension of the waiting period.

17 An insurer or advisory organization whose rates are disapproved
18 under this subsection may request a hearing before the
19 superintendent by filing a written request within thirty days
20 of the date of the disapproval notice; or

21 (2) at any time after the expiration of the
22 waiting period or an extension of the waiting period, after
23 giving notice of hearing pursuant to the provisions of
24 Subsection A of Section 59A-4-16 NMSA 1978 to every insurer and
25 advisory organization that adopted the rate.

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1 D. The superintendent's notice or order of
2 disapproval shall specify the respects in which the rate fails
3 to meet the standards set forth in Section 59A-17-6 NMSA 1978.
4 The notice or order shall state an effective date no sooner
5 than thirty business days after the date of the notice or order
6 when the insurer shall discontinue the use of the rate. The
7 notice or order shall not affect any policy made before the
8 effective date of the notice or order."

9 Section 16. A new section of the Insurance Rate
10 Regulation Law is enacted to read:

11 "[NEW MATERIAL] LARGE COMMERCIAL POLICYHOLDERS.--

12 A. The superintendent may, by rule, establish a
13 class of large commercial policyholders, to be known as exempt
14 commercial policyholders, that shall be exempt from the rate
15 and form requirements of Chapter 59A, Articles 17 and 18 NMSA
16 1978, except for form provisions relating to workers'
17 compensation mandatory coverage provisions.

18 B. In the promulgation of this rule, the
19 superintendent shall consider the following factors in
20 establishing an exempt commercial policyholder class:

21 (1) the characteristics of insureds that are
22 likely to study and understand the details of their business
23 risks, insurance coverages and exclusions;

24 (2) the characteristics of insureds that are
25 likely to avail themselves of regular price comparisons between

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1 competing insurers and are likely to study and understand the
2 differences and details of pricing proposals that they receive;

3 (3) the characteristics of insureds that are
4 likely to require individually written policies, as contrasted
5 to insureds that can customarily have their coverage needs met
6 through a compilation of forms with applicability to other
7 insureds as well;

8 (4) the characteristics of insureds for which
9 filed rates and rating plans are less likely to provide the
10 lowest premiums otherwise consistent with the provisions of the
11 Insurance Rate Regulation Law;

12 (5) the favorable or adverse experiences with
13 exemptions from regulatory requirements, especially the
14 experience in New Mexico;

15 (6) the extent to which commercial insureds
16 primarily located in another jurisdiction are subject to
17 similar exemptions or waivers in that jurisdiction; and

18 (7) any other relevant factors.

19 C. The superintendent may, by rule, waive some or
20 all of the diligent search requirements related to placement of
21 risks in the approved surplus lines market for some or all of
22 the exempt commercial policyholders."

23 Section 17. Section 59A-17-13.1 NMSA 1978 (being Laws
24 1993, Chapter 103, Section 1) is amended to read:

25 "59A-17-13.1. DISCOUNTS ON HOMEOWNERS' POLICIES FOR
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1 ~~[COMPREHENSIVE COVERAGE]~~ BURGLARY PROTECTIONS.--Any insurer
2 licensed to write homeowner's insurance, as defined by the
3 superintendent ~~[of insurance]~~, within the state shall provide a
4 minimum premium discount of ten percent for houses with
5 electronic alarm systems designed to prevent unauthorized entry
6 into the house. The insurer shall also provide a minimum
7 premium discount of five percent for houses with wrought iron
8 bars covering all the doors and windows of the house. These
9 discounts shall apply to comprehensive coverage and shall be
10 ~~[approved by the superintendent pursuant to Section 59A-17-13~~
11 ~~NMSA 1978 as]~~ part of the insurer's rate filing. Some or all
12 of the premium discounts required by this section may be
13 omitted upon demonstration to the superintendent in an
14 insurer's rate filing that the discounts are duplicative of
15 other discounts provided by the insurer."

16 Section 18. Section 59A-17-16 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 312, as amended) is amended to read:

18 "59A-17-16. ~~[DELAYED EFFECT OF RATES]~~ REQUIREMENT FOR
19 SUPPORTING INFORMATION.--

20 A. By rule, the superintendent may require the
21 filing of supporting data as to any or all kinds or lines of
22 insurance or subdivisions thereof or classes of risks or
23 combinations thereof as ~~[he]~~ the superintendent deems necessary
24 for the proper functioning of the rate monitoring and
25 regulating process. The supporting data shall include:

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1 (1) the experience and judgment of the filer
2 and, to the extent it wishes or the superintendent requires, of
3 other insurers or [~~rate service~~] advisory organizations;

4 (2) its interpretation of any statistical data
5 relied upon;

6 (3) descriptions of the actuarial and
7 statistical methods employed in setting the rates; and

8 (4) any other relevant matters required by the
9 superintendent.

10 B. Whenever a filing is not accompanied by [~~such~~]
11 the information as the superintendent has required under
12 Subsection A of this section, [~~he~~] the superintendent may [~~so~~]
13 inform the insurer and the filing shall be deemed to be made
14 when the information is furnished."

15 Section 19. Section 59A-17-17 NMSA 1978 (being Laws 1984,
16 Chapter 127, Section 313, as amended) is amended to read:

17 "59A-17-17. USE OF [~~RATE SERVICE~~] ADVISORY ORGANIZATION
18 [~~ADVISORY~~] FILINGS.--

19 A. An insurer may itself establish rates and
20 supplementary rate information for [~~any~~] a market segment based
21 on the factors set forth in Section 59A-17-7 NMSA 1978 or it
22 may in its rate filing incorporate by reference loss costs and
23 other supplementary rate information prepared by [~~a rate~~
24 ~~service~~] an advisory organization, with [~~such~~] modification for
25 its own loss experience as the credibility of that experience

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1 allows.

2 B. Nothing in [~~Chapter 59A, Article 17 NMSA 1978~~]
3 the Insurance Rate Regulation Law shall be construed as
4 requiring [~~any~~] an insurer to become a member of or subscriber
5 to any [~~rate-service~~] advisory organization.

6 C. The superintendent may adopt rules establishing
7 standards and administrative procedures to carry out the
8 provisions of this section."

9 Section 20. Section 59A-17-18 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 314) is amended to read:

11 "59A-17-18. [~~RATE-SERVICE~~] ADVISORY ORGANIZATIONS--
12 LICENSE REQUIRED--OBLIGATION TO PROVIDE SERVICE.--

13 A. No [~~rate-service~~] advisory organization shall
14 provide [~~any~~] a service relating to the statistical collection
15 or the rates of [~~any~~] an insurance subject to [~~this article~~]
16 the Insurance Rate Regulation Law, and no insurer shall
17 [~~utilize~~] use the services of [~~such~~] the organization for such
18 purposes, unless the organization has obtained a license as
19 required by Section [~~315 of this article~~] 59A-17-19 NMSA 1978.

20 B. No [~~rate-service~~] advisory organization shall
21 refuse to supply [~~any~~] a service for which it is licensed in
22 this state to [~~any~~] an authorized insurer offering to pay the
23 fair and usual compensation for the services."

24 Section 21. Section 59A-17-19 NMSA 1978 (being Laws 1984,
25 Chapter 127, Section 315) is amended to read:

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1 "59A-17-19. [~~RATE SERVICE~~] ADVISORY ORGANIZATIONS--
2 LICENSING.--

3 A. [~~Any~~] A person, whether domiciled within or
4 outside this state, may apply to the superintendent for license
5 as [~~a rate service~~] an advisory organization for [~~such~~] the
6 kinds of insurance or subdivisions thereof as are specified in
7 its application. The application shall include:

8 (1) a copy of its constitution, charter,
9 articles of organization, agreement, association or
10 incorporation and a copy of its bylaws, plan of operation and
11 [~~any~~] other rules [~~or regulations~~] governing conduct of its
12 business;

13 (2) a list of its members and subscribers;

14 (3) the name and address of one or more
15 residents of this state upon whom notices, process affecting it
16 or orders of the superintendent may be served;

17 (4) a statement showing its technical
18 qualifications for acting in the capacity for which it seeks a
19 license;

20 (5) payment of the license application fee in
21 an amount specified in Section [~~101 (fee schedule)~~] of the
22 Insurance Code] 59A-6-1 NMSA 1978; and

23 (6) any other relevant information and
24 documents that the superintendent may require.

25 B. Every [~~rate service~~] advisory organization

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1 [which] that has applied for a license shall ~~[thereafter]~~
2 promptly notify the superintendent in writing of every material
3 change in the facts or in the documents on which its
4 application was based, or of change in name, address of its
5 process agent under Paragraph (3) ~~[above]~~ of Subsection A of
6 this section. No amendment to ~~[any]~~ a document referred to in
7 Paragraph (1) ~~[above]~~ of Subsection A of this section shall be
8 effective until not less than thirty ~~[30]~~ days after the
9 amendment is filed with the superintendent.

10 C. If the superintendent finds that the applicant
11 and the individuals through whom it acts are competent,
12 trustworthy and technically qualified to provide the services
13 proposed, and that all requirements of law are met, ~~[he]~~ the
14 superintendent shall within sixty ~~[60]~~ days after completion
15 of the application issue a license to the applicant specifying
16 the authorized activity; otherwise, ~~[he]~~ the superintendent
17 shall refuse to issue the license and shall promptly notify the
18 applicant ~~[thereof]~~, specifying the grounds for refusal. The
19 superintendent shall not issue a license if the proposed
20 activity would tend to create a monopoly or lessen or destroy
21 price competition.

22 D. Licenses issued pursuant to this section shall
23 remain in effect until the licensee withdraws from the state or
24 until the license is suspended or revoked, subject to annual
25 continuation on May ~~[1st]~~ 1 of each year by payment of the

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1 continuation fee specified [~~therefor~~] in Section [~~101 (fee~~
2 ~~schedule) of the Insurance Code~~] 59A-6-1 NMSA 1978."

3 Section 22. Section 59A-17-20 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 316) is amended to read:

5 "59A-17-20. SUSPENSION, REVOCATION OF LICENSE.--The
6 superintendent shall promptly revoke the license of [~~a rate~~
7 ~~service~~] an advisory organization if it ceases business or
8 withdraws from this state, and [~~he~~] the superintendent may
9 suspend or revoke the license if [~~he~~] the superintendent finds
10 after a hearing that:

11 A. the organization no longer meets the
12 qualifications for licensing; or

13 B. the organization has failed to file amended
14 documents as required under Section [~~315 of this article~~]
15 59A-17-19 NMSA 1978, or has violated or failed to comply with
16 any other material requirement of [~~this article~~] the Insurance
17 Rate Regulation Law or [~~of~~] any other law."

18 Section 23. Section 59A-17-21 NMSA 1978 (being Laws 1984,
19 Chapter 127, Section 317) is amended to read:

20 "59A-17-21. CONDUCT OF [~~RATE SERVICE~~] ADVISORY
21 ORGANIZATION.--

22 A. [~~A rate service~~] An advisory organization shall
23 furnish its services without discrimination to its members and
24 subscribers.

25 B. [~~No rate service~~] An advisory organization shall

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1 not adopt any rule, the effect of which would be to prohibit or
2 regulate payment of dividends, savings or unabsorbed premium
3 deposits allowed or returned by insurers to their
4 policyholders, members or subscribers."

5 Section 24. Section 59A-17-23 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 319) is amended to read:

7 "59A-17-23. [~~RATE SERVICE~~] ADVISORY ORGANIZATIONS--APPEAL
8 BY MINORITY.--[~~A. Any~~] A member of or subscriber to [~~a rate~~
9 ~~service~~] an advisory organization may appeal to the
10 superintendent from the action or decision of [~~such rate~~
11 ~~service~~] the advisory organization in approving or rejecting
12 [~~any~~] a proposed change in or addition to the filings of [~~such~~]
13 the advisory organization and the superintendent shall, after a
14 hearing, issue an order approving the action or decision of
15 [~~such rate service~~] the advisory organization or directing it
16 to give further consideration to [~~such~~] the proposal; or, if
17 [~~such~~] the appeal is from the action or decision of the [~~rate~~
18 ~~service~~] advisory organization in rejecting a proposed addition
19 to its filings, [~~he~~] the superintendent may, in the event [~~he~~]
20 the superintendent finds that [~~such~~] the action or decision was
21 unreasonable, issue an order directing the [~~rate service~~]
22 advisory organization to make an addition to its filings, on
23 behalf of its members and subscribers, in a manner consistent
24 with [~~his~~] the superintendent's findings, within a reasonable
25 time after the issuance of [~~such~~] the order.

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1 ~~[B. If such appeal is based upon the failure of the~~
2 ~~rate service organization to make a filing on behalf of such~~
3 ~~member or subscriber which is based on a system of expense~~
4 ~~provisions which differs, in accordance with the right granted~~
5 ~~in Section 303 or 304 of this article, from the system of~~
6 ~~expense provisions included in a filing made by the rate~~
7 ~~service organization, the superintendent shall, if he grants~~
8 ~~the appeal, order the rate service organization to make the~~
9 ~~requested filing for use by the appellant. In deciding such~~
10 ~~appeal the superintendent shall apply the standards set forth~~
11 ~~in Section 302 or 304, as applicable, of this article.]"~~

12 Section 25. Section 59A-17-25 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 320, as amended) is amended to read:

14 "59A-17-25. JOINT UNDERWRITING, [ØR] JOINT REINSURANCE
15 [ØORGANIZATIONS] POOL AND RESIDUAL MARKET MECHANISMS.--

16 A. [Every] A group, association or other
17 organization of insurers [which] that engages in joint
18 underwriting, [Ør] joint reinsurance pools or residual market
19 mechanisms through [~~such~~] the group, association or
20 organization or by standing agreement among the members
21 [~~thereof~~], shall file with the superintendent:

22 (1) a copy of its constitution, its articles
23 of incorporation, agreement or association and [Øf] its bylaws
24 and rules [~~and regulations~~] governing its activities, all duly
25 certified by the custodian of the originals [~~thereof~~];

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1 (2) a list of its members; and

2 (3) the name and address of a resident of this
3 state upon whom notices or orders of the superintendent or
4 process affecting ~~[such]~~ the group, association or organization
5 may be served.

6 B. Every such group, association or other
7 organization shall notify the superintendent promptly in
8 writing of ~~[every change]~~ changes in its constitution, its
9 articles of incorporation, agreement or association, ~~[in]~~ its
10 bylaws and rules ~~[and regulations]~~ governing conduct of its
11 business, its list of members or ~~[of]~~ the name and address of
12 its process agent referred to in Paragraph (3) of Subsection A
13 of this section.

14 C. Every such group, association or organization
15 shall be subject to regulation as herein provided, subject,
16 however, as to joint underwriting to applicable provisions of
17 ~~[Chapter 59A, Article 17 NMSA 1978]~~ the Insurance Rate
18 Regulation Law, and as to joint reinsurance to Sections
19 59A-17-13, ~~[59A-17-14]~~ 59A-17-32, 59A-17-34 and 59A-17-35 NMSA
20 1978.

21 D. No ~~[such]~~ group, association or organization
22 shall engage in ~~[any]~~ an unfair or unreasonable practice with
23 respect to its activities. If, after a hearing, the
24 superintendent finds that ~~[any]~~ an activity or practice of ~~[any~~
25 ~~such]~~ a group, association or organization is unfair or

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1 unreasonable or otherwise inconsistent with the provisions of
2 [~~Chapter 59A, Article 17 NMSA 1978, he~~] the Insurance Rate
3 Regulation Law, the superintendent may issue [~~his~~] an order
4 specifying the respects in which the activity or practice is
5 unfair or unreasonable or otherwise inconsistent with the
6 provisions of [~~that article~~] the Insurance Rate Regulation Law
7 and requiring discontinuance of [~~such~~] the activity or
8 practice."

9 Section 26. Section 59A-17-26 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 321) is amended to read:

11 "59A-17-26. BINDING AGREEMENTS BY INSURERS.--No insurer
12 shall assume [~~any~~] an obligation to [~~any~~] a person other than a
13 policyholder or other insurers [~~which~~] that with it are under
14 common control or management or are members of a joint
15 underwriting organization subject to the provisions of Section
16 [~~320 of this article~~] 59A-17-25 NMSA 1978, to use or adhere to
17 certain rates or rules, and no other person shall impose [~~any~~]
18 a penalty or other adverse consequence for failure of an
19 insurer to adhere to certain rates or rules except as to action
20 by the superintendent in enforcement of Section [~~308 (insurer~~
21 ~~must adhere to filed rates) or Subsection E of Section 306~~
22 ~~(rate filings, workmen's compensation) of this article~~]
23 59A-17-12 NMSA 1978."

24 Section 27. Section 59A-17-27 NMSA 1978 (being Laws 1984,
25 Chapter 127, Section 322) is amended to read:

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1 "59A-17-27. COOPERATIVE ACTIVITIES AUTHORIZED.--

2 Cooperation among [~~rate service~~] advisory organizations or
3 among [~~such~~] organizations and insurers in rate making or in
4 other matters within the scope of the [~~article~~] Insurance Rate
5 Regulation Law is hereby authorized, provided the filings
6 resulting from [~~such~~] the cooperation are subject to [~~all~~]
7 provisions of the [~~article~~] Insurance Rate Regulation Law
8 applicable to filings generally. The superintendent may review
9 [~~such~~] the cooperative activities and practices and if, after a
10 hearing, [~~he~~] the superintendent finds that [~~any such~~] the
11 activity or practice is unfair or unreasonable or otherwise
12 inconsistent with [~~this article, he~~] the Insurance Rate
13 Regulation Law, the superintendent may issue an order
14 specifying the respects in which [~~such~~] the activity or
15 practice is unreasonable or otherwise inconsistent with [~~this~~
16 ~~article~~] the Insurance Rate Regulation Law and requiring
17 discontinuance of [~~such~~] the activity or practice."

18 Section 28. Section 59A-17-28 NMSA 1978 (being Laws 1984,
19 Chapter 127, Section 323) is amended to read:

20 "59A-17-28. RECORDING, REPORTING OF EXPERIENCE.--The
21 superintendent shall promulgate or approve reasonable rules,
22 including rules providing statistical plans, for use
23 [~~thereafter~~] by all insurers in the recording and reporting of
24 loss and expense experience, so that the experience of an
25 insurer may be made available to [~~him~~] the superintendent at

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1 least annually in such form and detail as may be necessary to
2 aid ~~[him]~~ the superintendent in determining whether rating
3 systems comply with applicable rate standards and requirements.
4 In promulgating ~~[such]~~ the rules and plans the superintendent
5 shall give due consideration to the rating systems on file with
6 ~~[him]~~ the superintendent and, so that ~~[such]~~ the rules and
7 plans may be as uniform as practicable among the several
8 states, to the rules and form of plans used for rating systems
9 in other states. No insurer shall be required to record or
10 report its experience on a classification basis inconsistent
11 with its own rating system. The superintendent may designate
12 one or more ~~[rate service]~~ advisory organizations to assist
13 ~~[him]~~ the superintendent in gathering ~~[such]~~ that experience
14 and making compilations ~~[thereof]~~ of that experience, which
15 shall be made available to insurers, ~~[rate service]~~ advisory
16 organizations and the public."

17 Section 29. Section 59A-17-29 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 324) is amended to read:

19 "59A-17-29. EXCHANGE OF DATA, CONSULTATION AUTHORIZED.--

20 A. The superintendent may promulgate reasonable
21 rules and plans for interchange among insurers, ~~[rate service]~~
22 advisory organizations and others, of data necessary for
23 application of rating plans.

24 B. For furtherance of uniformity in administration
25 of rate regulatory laws, the superintendent and every insurer

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1 and ~~[rate service]~~ advisory organization may exchange
2 information and experience data with insurance ~~[supervisory]~~
3 regulatory officials, insurers and ~~[rate service]~~ advisory
4 organizations in this and other states and may consult with
5 them as to rate making and the application of rating systems."

6 Section 30. Section 59A-17-30 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 325) is amended to read:

8 "59A-17-30. INFORMATION TO BE FURNISHED INSUREDS--
9 HEARINGS AND APPEALS OF INSUREDS.--

10 A. Every ~~[rate service]~~ advisory organization and
11 every insurer ~~[which]~~ that makes its own rates shall, within
12 time frames promulgated by the superintendent or, in the
13 absence of time frames, within a reasonable time after
14 receiving written request ~~[therefor and upon payment of such~~
15 ~~reasonable charge as it may make]~~, furnish to ~~[any]~~ an insured
16 affected by a rate made by it, or to the authorized
17 representative of ~~[such]~~ the insured, all pertinent information
18 as to ~~[such]~~ the rate.

19 B. Every ~~[rate service]~~ advisory organization and
20 every insurer ~~[which]~~ that makes its own rates shall provide
21 within this state reasonable means whereby ~~[any]~~ a person
22 aggrieved by the application of its rating system may be heard,
23 in person or by ~~[his]~~ the person's authorized representative,
24 on ~~[his]~~ the person's written request to review the manner in
25 which ~~[such]~~ the rating system has been applied in connection

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1 with the insurance afforded ~~[him]~~ the person. If the ~~[rate~~
2 ~~service]~~ advisory organization or insurer fails to grant or
3 reject ~~[such]~~ the request within thirty ~~(30)~~ days after it is
4 made, the applicant may proceed in the same manner as if ~~[his]~~
5 the application had been rejected. ~~[Any]~~ A party affected by
6 the action of ~~[such]~~ the rate service organization or ~~[such]~~
7 the insurer on ~~[such]~~ the request may, within thirty ~~(30)~~
8 days after written notice of ~~[such]~~ the action, appeal to the
9 superintendent, who, after a hearing, may affirm or reverse
10 ~~[such]~~ the action. If, after the hearing, it is determined
11 that the rates charged by an insurer are in excess of the
12 otherwise appropriate rate, the overcharge shall be refunded to
13 the insured."

14 Section 31. Section 59A-17-31 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 326) is amended to read:

16 "59A-17-31. FALSE OR MISLEADING INFORMATION.--No person
17 shall ~~[wilfully]~~ willfully withhold information from, or
18 knowingly give false or misleading information to, the
19 superintendent or statistical agency designated by ~~[him]~~ the
20 superintendent or ~~[rate service]~~ advisory organization or
21 insurer ~~[which]~~ that will affect rates or rating plans under
22 ~~[this article]~~ the Insurance Rate Regulation Law. Violation of
23 this section shall be subject to the penalties provided under
24 Section ~~[18 (general penalty) of the Insurance Code]~~ 59A-1-18
25 NMSA 1978."

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1 Section 32. Section 59A-17-32 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 327) is amended to read:

3 "59A-17-32. EXAMINATION OF ~~[RATE SERVICE]~~ ADVISORY AND
4 JOINT UNDERWRITING ORGANIZATIONS, JOINT REINSURANCE
5 ~~[ORGANIZATIONS]~~ POOLS AND RESIDUAL MARKET MECHANISMS.--

6 A. To ~~[inform himself]~~ be informed about any matter
7 related to enforcement of provisions of the Insurance Code, the
8 superintendent may examine the affairs and condition of any
9 ~~[rate service organization]~~ advisory or joint underwriting [or]
10 organization, joint reinsurance ~~[organization]~~ pool or residual
11 market mechanism. The superintendent shall ~~[se]~~ examine every
12 ~~[rate service]~~ advisory organization and conduct the
13 examinations at intervals established by rules ~~[and regulations~~
14 ~~duly]~~ promulgated by ~~[him]~~ the superintendent.

15 B. In lieu of all or part of ~~[any such]~~ an
16 examination, or in addition ~~[thereto]~~ to an examination, the
17 superintendent may order an independent audit by certified
18 public accountants or actuarial evaluation by actuaries
19 approved by ~~[him]~~ the superintendent, or may accept the report
20 of an audit already made by certified public accountants or
21 actuarial evaluation by actuaries approved by ~~[him]~~ the
22 superintendent, or the report of an examination made by the
23 insurance supervisory official of another state.

24 C. Conduct of the examination, examiners and other
25 personnel used by the superintendent in making the

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1 examinations, payment of costs of the examination by the
2 examinee, examination report and review and adoption [~~thereof~~]
3 and the examination in general shall be subject to the
4 applicable provisions of Chapter 59A, Article 4 [~~(examinations,~~
5 ~~hearings and appeals)~~ of the ~~Insurance Code~~] NMSA 1978."

6 Section 33. Section 59A-17-33 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 328) is amended to read:

8 "59A-17-33. ENFORCEMENT--CEASE AND DESIST, INJUNCTIONS--
9 PENALTIES.--

10 A. The superintendent shall enforce compliance with
11 the provisions of [~~this article~~] the Insurance Rate Regulation
12 Law. Whenever the superintendent believes that there is a
13 violation of [~~this article~~] the Insurance Rate Regulation Law
14 and that such violation is continuing, [~~he~~] the superintendent
15 shall serve upon the [~~rate service~~] advisory, joint
16 underwriting, joint reinsurance [organization] pool, residual
17 market mechanism or insurer or other person [~~so~~] violating, as
18 the case may be, notice of a hearing before the superintendent
19 to be held not less than twenty [~~(20)~~] days after service of
20 the notice, and requiring [~~such~~] the organization or person to
21 show cause why the superintendent should not order the
22 organization or person to cease and desist from [~~such~~] the
23 violation.

24 B. The superintendent, through the attorney
25 general, may maintain an action to enjoin [~~any~~] a continuing

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1 violation of [~~this article~~] the Insurance Rate Regulation Law.

2 C. After hearing, the superintendent may suspend
3 the license of [~~any rate service~~] an advisory organization or
4 insurer [~~which~~] that fails to comply with the superintendent's
5 order within the time limited by the order or [~~any~~] an
6 extension of time [~~which~~] that the superintendent may grant.
7 The suspension shall not become effective until the time
8 prescribed for an appeal [~~therefrom~~] has expired, or if an
9 appeal has been taken, until [~~such~~] the order has been
10 affirmed; otherwise, the superintendent may determine when the
11 suspension shall become effective, and the suspension shall
12 remain in effect for the period [~~so~~] fixed unless the
13 superintendent modifies or rescinds the suspension, or until
14 the order on which suspension is based is modified, rescinded
15 or reversed.

16 D. If [~~he~~] the superintendent finds that [~~any~~] a
17 person has violated any provision of [~~this article~~] the
18 Insurance Rate Regulation Law, the superintendent may impose a
19 penalty of not more than [~~fifty dollars (\$50)~~] ten thousand
20 dollars (\$10,000) for each [~~such~~] violation; but if [~~he~~] the
21 superintendent finds the violation to be [~~wilful~~] willful, the
22 superintendent may impose a penalty of not more than [~~five~~
23 ~~hundred (\$500)~~] twenty-five thousand dollars (\$25,000) for each
24 violation. Such penalties may be in addition to any other
25 penalty provided by law, and, if not paid voluntarily by the

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1 violator, may be collected through civil action in the district
2 court of Santa Fe county in the name of the state of New Mexico
3 on the relation of the insurance board.

4 E. For the purposes of this section, an insurer using
5 a rate for which the insurer has failed to file the rate,
6 supplementary rate information or supporting information, if
7 Section 59A-17-9 NMSA 1978 requires the materials to be filed,
8 shall have committed a separate violation for each day the
9 failure continues."

10 Section 34. Section 59A-17-35 NMSA 1978 (being Laws 1984,
11 Chapter 127, Section 330, as amended by Laws 1999, Chapter 265,
12 Section 67 and also by Laws 1999, Chapter 289, Section 26) is
13 amended to read:

14 "59A-17-35. APPEALS FROM COMMISSION.--Any order made by
15 the [~~public regulation~~] commission pursuant to Section
16 59A-17-34 NMSA 1978 shall be subject to review by appeal to the
17 district court pursuant to the provisions of Section 39-3-1.1
18 NMSA 1978. Upon institution of the appeal and for good cause
19 shown upon motion and hearing, the court may, in the following
20 cases, stay operation of the commission's order:

21 A. where, pursuant to [~~Chapter 59A, Article 17 NMSA~~
22 ~~1978, a rate service~~] the Insurance Rate Regulation Law, an
23 advisory organization has been refused a license or an insurer
24 has been refused a certificate of authority or had its license
25 or certificate of authority suspended, it may, with leave of

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1 court, be allowed to continue to engage in business, subject to
2 the provisions of [~~that article~~] the Insurance Rate Regulation
3 Law, pending final disposition of its application for review;
4 or

5 B. where any order of the commission shall provide
6 for, or sustain the superintendent's order for, a change in
7 [~~any~~] a rate or rating system that results in an increase or
8 decrease in rates, [~~any~~] an insurer affected may, with leave of
9 court pending final disposition of the proceedings in the
10 district court, continue to charge rates that existed prior to
11 [~~such~~] the order, on condition that the difference in the rates
12 be deposited in a special escrow or trust account with a
13 reputable financial institution by the insurer affected, to be
14 held in trust by [~~such~~] the insurer and to be retained by the
15 insurer or paid to the holders of policies issued after the
16 order of the court, as the court may determine."

17 Section 35. Section 59A-17-36 NMSA 1978 (being Laws 1989,
18 Chapter 145, Section 2) is amended to read:

19 "59A-17-36. RATE FILING--FAILURE TO SUBMIT DATA--
20 PENALTY.--

21 A. [~~Any~~] An insurer or [~~rate service~~] advisory
22 organization [~~who~~] that makes a rate filing under the Insurance
23 Rate Regulation Law and fails, without reasonable cause, to
24 provide the data requested by the superintendent within thirty
25 working days from the date of the request shall be subject to

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1 an administrative penalty as provided in Section 59A-1-18 NMSA
2 1978.

3 B. The superintendent may, for good cause shown,
4 grant an extension of the thirty-day time period provided for
5 in Subsection A of this section.

6 C. The insurer or [~~rate service~~] advisory
7 organization may, within ten days after entry of the order,
8 request a hearing before the superintendent as provided in
9 Section 59A-17-34 NMSA 1978."

10 Section 36. Section 59A-18-12 NMSA 1978 (being Laws 1984,
11 Chapter 127, Section 342, as amended) is amended to read:

12 "59A-18-12. FILING OF FORMS AND CLASSIFICATIONS--REVIEW
13 OF EFFECT UPON INSURED.--

14 A. An insurance policy or annuity contract shall not
15 be delivered or issued for delivery in this state, nor shall
16 [~~any~~] an assumption certificate, endorsement, rider or
17 application that becomes a part of [~~any such~~] a policy be used,
18 until a copy of the form and the classification of risks
19 pertaining [~~thereto~~] to the policy have been filed with the
20 superintendent. [~~Any such~~] A filing shall be made at least
21 sixty days before its proposed effective date. A filing made
22 pursuant to this section shall not become effective nor shall
23 it be used until approved by the superintendent pursuant to
24 Section 59A-18-14 NMSA 1978, at which time it may be used. A
25 filing for any kind of insurance other than life insurance or

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1 health insurance, as defined in the Insurance Rate Regulation
2 Law, shall be deemed to meet the requirements of Chapter 59A,
3 Article 18 NMSA 1978 to become effective unless disapproved
4 pursuant to Section 59A-18-14 NMSA 1978 by the superintendent
5 before the expiration of the waiting period or an extension of
6 the waiting period. Provided, that:

7 (1) this subsection shall not apply as to
8 policies, contracts, endorsements or riders of unique and
9 special character not for general use or offering but designed
10 and used solely as to a particular insured or risk; [~~and~~]

11 (2) if the superintendent has exempted a person
12 or a class of persons or a market segment from a part or all of
13 the provisions of the Insurance Rate Regulation Law pursuant to
14 Subsection C of Section 59A-17-2 NMSA 1978, the superintendent
15 also may exempt by rule that person, class of persons or market
16 segment from a part or all of the provisions of this
17 subsection;

18 (3) an insurer subject to the Insurance Rate
19 Regulation Law may authorize an advisory organization to file
20 policy forms, endorsements and other contract language and
21 related attachment rules on its behalf. Reference filings
22 shall be made prior to their use or by other methods the
23 superintendent may allow by rule; and

24 (4) the superintendent may, by rule, exempt
25 various lines and kinds of commercial insurance, as defined in

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1 the Insurance Rate Regulation Law, from some or all of the
2 requirements of this subsection.

3 B. A workers' compensation insurance policy covering
4 a risk arising from the employment of a worker performing work
5 for an employer in New Mexico when that employer is not
6 domiciled in New Mexico shall not be issued or become
7 effective, nor shall any endorsement or rider covering such a
8 risk be issued or become effective, until a copy of the form
9 and the classification of risks pertaining thereto have been
10 filed with the superintendent.

11 C. ~~Any~~ An insured may in writing request the
12 insurer to review the manner in which its filing has been
13 applied as to insurance afforded ~~him~~ the insured. If the
14 insurer fails to make a review and grant appropriate relief
15 within thirty days after the request is received, the insured
16 may file a written complaint and request for a hearing with the
17 superintendent, stating grounds relied upon. If the complaint
18 charges a violation of the Insurance Code and the
19 superintendent finds that the complaint was made in good faith
20 and that the insured would be aggrieved if the violation is
21 proved, ~~he~~ the superintendent shall hold a hearing, with
22 notice to the insured and insurer stating the grounds of
23 complaint. If upon the hearing the superintendent finds the
24 complaint justified, ~~he~~ the superintendent shall order the
25 insurer to correct the matter complained of within a reasonable

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1 time specified but not less than twenty days after a copy of
2 [~~his~~] the order was mailed to or served upon the insurer."

3 Section 37. Section 59A-18-17 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 346, as amended) is amended to read:

5 "59A-18-17. STANDARD PROVISIONS, IN GENERAL.--

6 A. Insurance contracts shall contain such standard or
7 uniform provisions as are required by applicable provisions of
8 the Insurance Code pertaining to contracts of particular kinds
9 of insurance.

10 B. No policy shall contain [~~any~~] a provision
11 inconsistent with or contradictory to [~~any~~] a standard or
12 uniform provision used or required to be used, but the
13 superintendent may approve [~~any~~] a substitute provision [~~which~~]
14 that is, in [~~his~~] the superintendent's opinion, not less
15 favorable in any particular to the insured, owner or
16 beneficiary than the provision otherwise required or [~~which~~]
17 that is designed to comply with Chapter 59A, Article 19 NMSA
18 1978.

19 C. Insurance coverage provided in residential
20 property insurance policies shall provide coverage for the cost
21 to repair or replace without deduction for depreciation. If
22 the insured elects to effectuate repairs to the property
23 [~~himself~~] by the insured's own self, a reasonable overhead
24 expense shall be allowed.

25 D. In lieu of the provisions required by the

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1 Insurance Code for contracts for particular kinds of insurance,
2 substantially similar provisions required by the laws of the
3 domicile of a foreign or alien insurer may be used when
4 approved by the superintendent.

5 E. A policy issued by a domestic insurer for delivery
6 in another jurisdiction may contain any provision required or
7 permitted under the laws of such jurisdiction.

8 F. To protect consumers as well as enhance the value
9 of consumer information systems, the superintendent may specify
10 minimum coverage provisions that homeowners insurance policies,
11 private passenger non-fleet automobile insurance policies or
12 other lines or kinds of insurance policies that are priced in a
13 consumer information system shall contain, provided that such
14 minimum coverage provisions are contained in the majority of
15 policies in force in New Mexico for that line or kind of
16 insurance. An insurer that does not offer a policy that
17 contains the minimum coverage provisions specified by the
18 superintendent for a line or kind of insurance shall not be
19 included in a consumer information system for that line or kind
20 of insurance. The superintendent shall not compel an insurer
21 to offer a policy containing minimum coverage provisions
22 specified by the superintendent."

23 Section 38. REPEAL.--Sections 59A-17-10, 59A-17-14,
24 59A-17-22, 59A-17-22.1 and 59A-17-24 NMSA 1978 (being Laws
25 1984, Chapter 127, Sections 306, 310 and 318, Laws 1986,
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1 Chapter 22, Section 100 and Laws 1984, Chapter 127, Section
2 319a, as amended) are repealed.

3 Section 39. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2007.

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